

**VERMONT ENVIRONMENTAL BOARD**  
**10 V.S.A. §§ 6001-6092**

Re: *Haystack Highlands, LLC*

Land Use Permit Application  
#700002-10D-EB

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

Mountain Meadows Condominium Association (Appellant) appeals the decision of the District # 2 Environmental Commission (Commission) granting Land Use Permit #700002-10D to Haystack Highlands, LLC (Permittee).

**I. PROCEDURAL SUMMARY**

On May 11, 2001, Permittee filed an application with the Commission seeking authorization to amend Land Use Permit #70002-10B (Dash 10B Permit) which authorized construction of the Cedar Creek project (Dash 10B Project). The amendment application sought to revise the previously permitted Cedar Creek project by changing the number of units and buildings, reducing the size of the club house to 4,000 square feet (rather than 14,000 square feet), and reconfiguring the interior roads and building locations located on 19 acres of land off Mann Road in the Town of Wilmington, Vermont (Project).

On July 10, 2002, the Commission issued Findings of Fact, Conclusions of Law, and Order (Decision) and Land Use Permit #700002-10D (Permit).

On August 7, 2002, Appellant filed an appeal with the Environmental Board (Board) from the Permit and Decision alleging that the Commission erred in its conclusions concerning 10 V.S.A. § 6086(a) (1)(E), (1)(G), (4), (5), and (8) (Criteria 1E, 1G, 4, 5, and 8); by concluding that, although the amendment application was not submitted before the prior permit expired, a new permit application was not required; that the so-called umbrella permits precluded testimony or evidence regarding various criteria and specifically whether the project conformed with local and regional plans; and by granting a permit when it is uncertain how the project will be financed. The appeal was filed pursuant to 10 V.S.A. § 6089(a) and Environmental Board Rule (EBR) 6 and 40.

On September 13, 2002, the Chair convened a prehearing conference and on September 17, 2002, she issued a Prehearing Conference Report and Order (PCRO).

On December 20, 2002, the Board issued a Memorandum of Decision on preliminary issues #2 and 4 in the PCRO.

On March 12, 2003, the Board issued a Memorandum of Decision on the remaining preliminary issues. The Chair also issued a Scheduling Order.

On May 22, 2003, the Permittee and the Appellant submitted a settlement agreement containing proposed permit conditions.

On June 3, 2003, the Chair issued a Chair's Preliminary Ruling canceling the hearing and setting a deadline for other parties to provide memoranda on the proposed stipulated permit conditions.

On June 18, 2003, the Board deliberated on the settlement agreement and stipulated permit conditions.

## **II. ISSUES ON APPEAL**

1. Whether, pursuant to 10 V.S.A. § 6086(a)(1)(E), the Project maintains the natural condition of the stream or endangers the health, safety, or welfare of the public or of adjoining land owners.
2. Whether, pursuant to 10 V.S.A. § 6086(a)(1)(G), the Project violates the rules of the Water Resources Board.
3. Whether, pursuant to 10 V.S.A. § 6086(a)(4), the Project will cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
4. Whether, pursuant to 10 V.S.A. § 6086(a)(5), the Project will cause unreasonable congestion or unsafe conditions with respect to the use of Mann Road and unsafe conditions along the internal roads of the Project.
5. Whether, pursuant to 10 V.S.A. § 6086(a)(8), the Project will have an undue adverse effect on aesthetics or scenic or natural beauty of the area.

## **III. DISCUSSION OF SETTLEMENT AGREEMENT**

Act 250 and the Board favor the non-adversarial resolution of issues by parties, see 10 V.S.A. §6085(e) and EBR 16(D). Public policy also "strongly

favors settlement of disputed claims without litigation.” *Dutch Hill Inn., Inc. v. Patten*, 131 Vt. 187, 192 (1973). However, the Board has the obligation to review any settlement reached between the parties. *Cersosimo Lumber Co.*, #2W0957-EB, Findings of Fact, Conclusions of Law, and Order at 3 (Nov. 29, 1995). This review must determine whether an affirmative finding can be made under all criteria on appeal, and the Board need not accept a settlement agreement if the necessary affirmative findings cannot be made, *Faucett Builders, Inc.*, #4C0763-2-EB, Findings of Fact, Conclusions of Law, and Order at 6 (Aug. 6, 1996), or if the agreement contravenes any of the Act 250 criteria. *Pico Peak Ski Resort, Inc.*, #1R0265-12-EB, Findings of Fact, Conclusions of Law, and Order at 4 (Nov. 22, 1995), *Accord, Andrew and Peggy Rogstad*, #2S1011-EB, Findings of Fact, Conclusions of Law, and Order at 4 (December 12, 1996).

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Generally, a settlement agreement will present the Board with proposed findings of fact and conclusions of law on which the Board can base its Findings of Fact and make positive Conclusions of Law on the Criteria. See, *Cersosimo Lumber Co.*, *supra*; *Faucett Builders, Inc.*, *supra*; *Andrew and Peggy Rogstad*, *supra*. The parties' Settlement Agreement did not contain proposed findings of fact or conclusions of law.<sup>1</sup>

However, the Board notes that the parties' settlement places additional restrictions above and beyond those in the Commission's Decision and Permit. For example, the stipulated permit conditions increase the vegetative screening, minimize potential traffic hazards, and further limit the hours that construction is allowed to occur. As a result, any environmental impacts on the Criteria at issue on this appeal will be either the same as those approved by the Commission or

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<sup>1</sup> Except as modified herein, the Board incorporates the parties' Settlement Agreement into the Findings of Fact, Conclusions of Law, and Order in furtherance of the provisions of Act 250, the Board Rules, and Vermont case law, all of which favor negotiated non-adversarial resolution to disputed matters. Had it held an evidentiary hearing and heard argument from the parties as to the application of the evidence to the Findings of Fact and the application of the Findings of Fact to the Conclusions of Law, however, the Board may well have reached conclusions in this case different from the resolution proposed by the parties. Thus, any precedential value of this decision is qualified by the fact that it incorporates and is based upon the parties' Settlement Agreement.

further reduced.

When a proposed settlement with stipulated permit conditions do not expand or intensify the project and only add additional restrictive permit conditions, the underlying positive findings of fact and conclusions of law in the district commission's permit remain sound. *Andrew and Peggy Rogstad* at 4.

In light of the fact that none of the underlying assumptions of the Commission's Permit will be disturbed and none of the values of Act 250 will be contravened, the Board will issue the permit with the stipulated permit conditions.

## **VI. ORDER**

1. Land Use Permit #700002-10D-EB is issued.
2. Jurisdiction is returned to the District #2 Environmental Commission.

Dated at Montpelier, Vermont this 19th day of June, 2003.

ENVIRONMENTAL BOARD

*/s/Patricia Moulton Powden*  
Patricia Moulton Powden, Chair  
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